

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6003 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

and

Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No :

NEW INDIA ASSURANCE CO LTD

Versus

PURBAI JADAVJI HIRANI

Appearance:

MS LILU K BHAYA for Petitioner

MR SANDEEP N BHATT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

and

MR.JUSTICE H.K.RATHOD

Date of decision: 01/03/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. This is an Appeal against the interim Award dated 15.6.1999 of Motor Accident Claims Tribunal, Kutch at Bhuj awarding Rs.50,000/- together with interest at the rate of 15 % p.a.

2. Learned Counsel for the parties have been heard. The Appeal can be finally disposed of without summoning the record.

3. Learned Counsel for the appellant has argued that no finding has been recorded on the basis of any material by the Tribunal that any truck was involved in the accident and vague finding has been given by the Tribunal. The contention is correct and is borne out from the Award of the Tribunal itself. The tribunal has abruptly observed "that the fact that the deceased was involved and died in vehicular accident is *prima facie* proved. It is also proved that the accident occurred on account of use of motor vehicle. The ownership of the vehicle is also proved. The vehicle was insured with the Insurance Company." With these observations the Tribunal concluded that the provisions of Section 140 of the Motor Vehicles Act are fully made out. Nothing has been mentioned in the Judgment under Appeal as to what was the material for coming to these conclusions especially when it was disputed by the appellant that the Truck No.GJ 12 D 9383 was not at all involved in the accident. It has been contended that the deceased was going on a scooter and he slipped when the scooter passed over a heap of sand and sustained injuries and died. She also pointed out that in the First Information Report there was no mention that it was a case of vehicular accident in which the Truck No.GJ - 12 - D - 9383 insured with the company was involved in the accident. Of course Police investigation followed and it appears that during police investigation this truck came in the lime light. It was also pointed out by the appellant's counsel that it was the 2nd F.I.R. in which this truck number was disclosed. However, needless to say that once the investigation commenced 2nd F.I.R. lodged during investigation is certainly hit by Section 162 of the Code of Criminal Procedure and it could not be considered as First Information Report or substantial evidence. Since it was seriously disputed that this truck was involved in the accident the Tribunal should have disclosed some material on the basis on which it came to the conclusion that this truck actually hit the scooter and the deceased on account of it sustained injuries.

4. When involvement of truck was disputed from the

side of the appellant Section 140(1) of the Motor Vehicles Act could not be blindly applied. It provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles the owner of the shall, or as the case may be, the owners of the vehicles shall jointly and severally be liable to any compensation in respect of such death or disablement in accordance with provisions of this Section.

5. It is, therefore, imperative for the Tribunal to record finding that the death of the victim resulted from an accident arising out of the use of a motor vehicle. Since subjective finding has been recorded by the Tribunal on this point without reference to any material on record we are unable to sustain the impugned order. It would be incorrect to say that merely because an application under Sec. 140 of the Motor Vehicle Act has been given it should be allowed without making inquiry whether the accident was the result of vehicular accident and whether particular vehicle was involved in the accident more particularly when it is disputed that the truck in question was not involved in the accident. In the absence of such inquiry and findings we are unable to sustain the impugned order.

6. The result thereof is that the Appeal has to be allowed and after setting aside the impugned interim Award it has to be sent back to the Tribunal for deciding the application u/s. 140 of the Motor Vehicles Act in accordance with law keeping in view the observations made in the body of Judgment. It is made clear that the entire interim Award is being set aside and it will be open to the appellant to argue on the point whether interest u/s. 140 of the Act can be granted by the Tribunal or not. After copy of this order is produced before the Tribunal it shall decide the application u/s. 140 of the Motor Vehicles Act expeditiously, preferably within a period of 2 months from the date of receipt of copy of this Judgment. No order as to costs.

sd/-

(D. C. Srivastava, J.)

Date : 1.3.2000 sd/-

(H. K. Rathod, J.)

sas